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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

060091.00278

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Name _____

Application Number:

10/800,030

Filed: March 15, 2004

First Named Inventor:

Jens STAACK

Art Unit: 2617

Examiner: Amancio GONZALEZ

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed (Form PTO/SB/96)

☒ Attorney or agent of record.
Registration No. 58,823

☐ Attorney or agent acting under 37 CFR 1.34.
Registration Number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

703-720-7822

Telephone number

June 1, 2009

Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Confirmation No.: 6867

Jens STAACK

Art Unit: 2617

Application No.: 10/800,030

Examiner: Amancio Gonzalez

Filed: March 15, 2004

Attorney Dkt. No.: 060091.00278

For: INITIATION OF PACKET-BASED SERVICES IN A PUBLIC MOBILE
COMMUNICATION SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 1, 2009

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicant hereby submits this Pre-Appeal Brief Request for Review of the final rejections of claims 26-31, 33-38, 40, 42, 54-57, 59, 60, 63 and 64 in the above identified application. Claims 26-31, 33-38, 40, 42, 54-57, 59, 60, 63 and 64 were finally rejected in the Office Action dated May 12, 2009. Applicant hereby appeals these rejections and submit this Pre-Appeal Brief Request for Review.

Claims 26-29, 33-36, 40, 42, 56, 57, 59, 60 and 62-64 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Chen (U.S. Publication No. 2004/0203770) in view of Schnake (U.S. Patent No. 7,099,659). The Office Action took the position that Chen and Schnake together disclose all of the features recited in the pending claims. This rejection is improper and must be withdrawn for including clear errors.

Chen discloses “methods and apparatus for [allegedly] optimizing the frequency of registrations as well as the area of paging in a wireless group communication network” (see paragraph [0001] of Chen). “[A] method in a mobile station (MS) for registering the MS with a base station (BS) includes the steps of determining the number of cells identified in a first list and registering the MS with the BS, if the number of cells identified in the first list is equal to a predetermined limit” (see paragraph [0005] of Chen). “[A] method for paging a target mobile station (MS) includes the steps of receiving information destined for a target MS and paging the target MS at a paging area that is centered at a cell, in which the target MS last registered, and expands by a predefined number of cells around the cell” (see paragraph [0006] of Chen).

Paragraph [0040] of Chen discloses that the caller is granted a request to talk before setup of dedicated channels to and from the callers and listeners has been completed (i.e., data is buffered while the connections are revived). Chen discloses a configuration where the listeners will be brought to a state allowing reception of packets prior to any specified starting time. The subject matter recited in claim 26 specifies a starting time so that the mobile terminal will be brought to a state allowing reception of packets at the specified starting time. The state is enacted “in response to receiving [the triggering message]” (see claim 26 of the present application.) Therefore, the modifying of Chen to allow a configurable delay or a specified start time would be beyond the scope of the communication system disclosed in Chen.

Claim 26 recites, in part, that “the triggering message indicates a starting time for the packet-based service session and the mobile terminal is brought to said state substantially at said starting time.” These features are somewhat similar to those recited in cancelled claim 39. Independent claims 33, 42, 57, 60, 63 and 64, which each have their own scope, recite similar features. On page 3, the Final Office Action dated May 12, 2009 conceded that Chen does not teach or suggest these features of the independent claims. The Office Action relied on column 18, lines 26-47 (claim 1) of Schnake to

allegedly cure these deficiencies of Chen. Applicant respectfully submits that Schnake also fails to disclose or suggest these features.

Schnake discloses a method of presentation of SMS messages to an individual subscriber station. For instance, Schnake discloses “A message and a time-based schedule for the presentation of the message are sent over a communications network to the subscriber station. As a response to this, the subscriber station may responsively present the message according to the time-based schedule” (see Abstract of Schnake). As can be seen from this example of Schnake, the SMS messages and schedule are only transferred to a single mobile station. Schnake does not disclose any group communication or managing activity of sessions.

Schnake fails to disclose or suggest “the triggering message indicates a starting time for the packet-based service session and the mobile terminal is brought to said state substantially at said starting time”, as recited in claim 26. The only “time” information disclosed in Schnake is related to the moment that a message is presented to the user (see Abstract of Schnake). Contrary to the disclosure of Schnake, claim 26 recites that “the triggering message indicates a starting time for the packet-based service session and the mobile terminal is brought to said state substantially at said starting time.” Schnake does not disclose any packet-based service session or bringing the mobile terminal to a particular state at the starting time.

Applicant submits that the reasoning for combining the references provided in the Office Action alleged that including a start time for Chen would provide “simplifying communication” initiation. Applicant disagrees and submits that including a start time in a system that provides automated setup of dedicated channels would complicate the system and not simplify any type of communication since the start time would require a timer to trigger such a starting action. Furthermore, since Chen begins buffering the speech data at the caller end before the listeners are in a state capable of receiving traffic, the buffering memory would need to be increased to complement the delayed start, which does not simplify the communication initiation process. These added complications are a

clear indication that Chen would not benefit from any start time being incorporated into its automated dedicated channel setup.

Therefore, Applicant submits that Chen and Schnake, taken individually or in combination, fail to disclose or suggest all of the features recited in independent claims 26, 33, 42 and 60. Claims 27-29, 34-36, 40, 56, 59 and 62 depend from independent claims 26, 33, 42 or 60 and add further features thereto. Thus, the arguments above with respect to the independent claims also apply to the dependent claims. Each of the above-noted rejections contain clear errors and must be withdrawn.

Claims 30, 31, 37 and 38 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chen and Schnake, in view of Zabawskyj (U.S. Publication No. 2005/0136952). Claims 30, 31, 37 and 38 depend from independent claims 26 or 33 and add further features thereto. Nothing is cited or found in Zabawskyj, which generally discusses “a wireless instant messaging and multi-media conferencing solution” (paragraph [0009]), that overcomes the deficiencies of Chen and Schnake discussed above with respect to the independent claims. Thus, the arguments above with respect to the independent claims also apply to claims 30, 31, 37 and 38.

Accordingly, the rejections of claims 30, 31, 37 and 38 contain clear errors and must be withdrawn.

Claims 54 and 55 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chen in view of Schnake and further in view of Desai (U.S. Patent No. 7,277,697). Claims 54 and 55 depend from independent claims 26 or 33 and add further features thereto. Nothing is cited or found in Desai et al., which generally discusses “establishing a teleconference over a telephony network” (column 1, lines 21 and 22), that overcomes the deficiencies of Chen and Schnake. discussed above with respect to the independent claims. Thus, the arguments above with respect to the independent claims also apply to claims 54 and 55.

Accordingly, the rejections of claims 54 and 55 contain clear errors and must be withdrawn.

For at least the reasons presented above, it is respectfully submitted that claims 26-31, 33-38, 40, 42 54-57, 59, 60 and 62-64, comprising all of the currently pending claims, patentably distinguish over the cited art. Accordingly, the claims should be allowed and the application be passed to issue.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosures: PTO/SB/33 Form
Notice of Appeal
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